

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

28674

FILE: B-212786

DATE: June 29, 1984

B-212955

MATTER OF: McKinley Trucking Co., Inc.

DIGEST:

A common carrier may incorporate by reference into a government rate tender additional transportation services and charges published in other tariffs or tenders. However, the government will not pay for services where the carrier has not shown that the service is additional to ones already available under the basic government tender or under GBL contract of carriage, or that the service has been performed.

McKinley Trucking, Co., Inc. (McKinley), requests review of the General Services Administration (GSA) denial of 12 claims of \$150 each for transportation services allegedly performed. We sustain GSA's settlement action.

Under each claim, the government bill of lading (GBL) was supplemented with a commercial bill of lading (CBL) form containing shipment delivery information which serves as McKinley's delivery receipt. The CBL contains the annotation, "DELIVERED WITHOUT EXCEPTION," which is crossed out. The source of the additional charge of \$150 per GBL claimed is McKinley tenders Nos. 2 and 4.

McKinley's tender No. 2 was the low bid for certain types of shipments for a 1-year period beginning July 1982, originating from Defense Depot, Tracy, California (Tracy). McKinley was awarded the contract for the requirement. The invitation advised bidders that tendered rates and charges were firm under the terms of the solicitation and could not be increased or decreased during the contract period. Carriers were advised further that carriers should include all their costs in the tender.

McKinley's supplemental billing is based on the following provision contained in tender No. 2:

"b. Charges and allowances.

Except as otherwise provided in this tender, shipments made under the provisions of this tender are entitled to those additional

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services and privileges as are provided in separately published tariffs or tenders to which the carrier(s) participates, including additional tariff or tenders charges, rules and regulations applicable to such services and privileges."

McKinley contends that this provision provides for application of the following provision contained in tender No. 4, which states:

"A service charge of \$150.00 will apply each and every time a Bill of Lading or other shipping document bears notations, marks, abbreviations (including but not by way of limitation, strikeovers of the notation 'Delivered Without Exception' where no exception to the condition of the freight or other property is noted), which notations are (A) made by the consignee or its agent, and (B) bear no relation to the condition of the freight or other property moved under that Bill of Lading or other shipping document."

McKinley argues that the annotation, "delivered without exception," and subsequent obliteration of the annotation results in an additional service and privilege provided by the carrier under this tender provision. McKinley states that a delivery receipt was required by Tracy and failure to provide signed delivery receipts is grounds for suspension of the carrier from the contract. Further, McKinley advises that the delivery receipt constitutes proof of delivery. According to McKinley, in the event the shipment contains either too much freight (--an overage), too little freight (--a shortage), or damage, exceptions are placed on the delivery receipt by the government. McKinley asserts that where the "delivered without exception" notation is obliterated, an exception is taken and the carrier is alerted to the possibility of overage, shortage, or damage. McKinley states that it investigates the problem and sends out freight tracers, where necessary, and thereby is entitled to the additional service charge under the tender.

GSA contends that neither the annotation "Delivered Without Exception" or the obliteration on the GBL

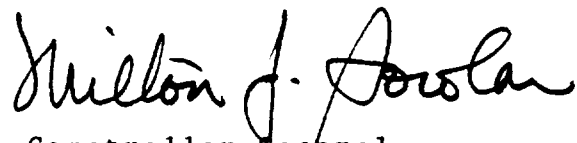
attachment provides an additional service or privilege to the shipper for which an additional service charge would be applicable.

Initially, we note that in Wells Cargo, Inc., 54 Comp. Gen. 610 (1975), involving a similar tender provision, we concluded that a common carrier could incorporate by reference into a government rate tender the transportation services and charges published in other tariffs or tenders. The crucial consideration here is whether or not McKinley is providing an additional service or privilege. We find that McKinley has not shown that it is providing an additional service or privilege.

As GSA points out, under the contract tender terms, the carrier agrees to furnish proof of delivery receipts upon request to the transportation officer at no additional cost. In light of this term, we do not consider the execution of the delivery receipt by the carrier to be itself an additional service or privilege as alleged by McKinley, since it is offered at no cost in the basic tender.

Furthermore, we do not find that the alleged investigation and tracing services constitute an additional service or privilege. As GSA correctly points out, the administrative handling of loss and damage claims is governed by the provisions on the reverse side of the GBL. The original and consignee GBL copies state the procedures to follow in handling a shortage or damage problem. We note that the consignee, by use of standard forms, must notify the carrier of the damage or shortage to initiate carrier investigation. In our view, carrier investigation or tracing is premature prior to notice of loss or damage to the shipment by the government through the established procedures.

In the absence of any showing by the carrier that an additional service or privilege was offered and performed in accordance with the tender provision, we sustain GSA's settlement action denying McKinley's claim.



Acting Comptroller General
of the United States